

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

FEB 13 2008

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

JEFFREY TYSON CURTIS,

Appellant.

2 CA-CR 2006-0376

DEPARTMENT A

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of  
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20042737

Honorable Michael J. Cruikshank, Judge

AFFIRMED AS MODIFIED

Terry Goddard, Arizona Attorney General  
By Randall M. Howe and William Scott Simon

Phoenix  
Attorneys for Appellee

Payson & Gattone  
By Paul Gattone

Tucson  
Attorneys for Appellant

H O W A R D, Presiding Judge.

¶1 After a jury trial held in his absence, appellant Jeffrey Curtis was convicted of six counts of sexual conduct with a minor under the age of twelve, all dangerous crimes

against children. *See* A.R.S. § 13-604.01(B). The trial court imposed six consecutive life terms of imprisonment, each with the possibility of parole after thirty-five years, with thirty-nine days of presentence incarceration credit as to count one.

¶2 In Curtis’s first appeal, counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967). Our review of the record for fundamental error showed the trial court had apparently believed it had no discretion but to impose consecutive life terms of imprisonment. We ordered the state to file an answering brief addressing that issue. The state conceded that, pursuant to § 13-604.01(B), the trial court had the discretion to impose life terms or presumptive, twenty-year terms. Finding that the sentences had been unlawfully imposed and the error to be fundamental, *see State v. Thues*, 203 Ariz. 339, ¶ 4, 54 P.3d 368, 369 (App. 2002), we vacated the sentences and remanded for resentencing. *State v. Curtis*, No. 2 CA-CR 2005-0089 (memorandum decision filed May 25, 2006). In October 2006, the trial court resentenced Curtis to six consecutive, twenty-year terms of imprisonment, to begin on March 14, 2005, the date the terms were originally imposed, with no presentence incarceration credit.

¶3 In this, Curtis’s second appeal, counsel has filed another brief in compliance with *Anders*, stating that he has reviewed the record, including the resentencing transcript, and has not found any “substantial errors.” He suggests, however, that the trial court failed to credit Curtis for thirty-nine days he served before the original sentences were imposed in March 2005. Curtis has not filed a supplemental brief.

¶4 At resentencing, the trial court correctly noted that any subsequent appeal is limited solely to issues related to Curtis's new sentences. *See State v. Hartford*, 145 Ariz. 403, 405, 701 P.2d 1211, 1213 (App. 1985) (scope of appeal from remand for resentencing limited to issues related only to resentencing where underlying conviction was previously affirmed on appeal). Therefore, to the extent Curtis is entitled to have this court review the record for fundamental error pursuant to *Anders*, that review is limited to that portion of the record related to the resentencing. Having reviewed the transcript and commitment order from the October 2006 resentencing, we noted that Curtis did not receive presentence incarceration credit for the thirty-nine days he spent in custody before his original sentences were imposed in March 2005. Section 13-709(B) and (C), A.R.S., provides as follows:

B. All time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for such offense shall be credited against the term of imprisonment otherwise provided for by this chapter.

C. If a sentence of imprisonment is vacated and a new sentence is imposed on the defendant for the same offense, the new sentence is calculated as if it had commenced at the time the vacated sentence was imposed, and all time served under the vacated sentence shall be credited against the new sentence.

¶5 Although the trial court clearly complied with subsection (C) of the statute by ordering Curtis to serve the new sentences from the date his original sentences were imposed, the court failed to credit Curtis for the time he spent in custody before he was originally sentenced. We thus ordered the state to file an answering brief to address the issue whether the trial court should have given Curtis such credit at resentencing. In its

answering brief, the state concedes that, pursuant to § 13-709(B), Curtis is entitled to such credit and that this error is fundamental. *See State v. Ritch*, 160 Ariz. 495, 498, 774 P.2d 234, 237 (App. 1989). We agree and thus modify Curtis's sentences to reflect thirty-nine days' presentence incarceration credit on count one.

¶6 We have found no other fundamental error in that portion of the record related to the resentencing. Accordingly, the convictions are affirmed and the sentences imposed on October 16, 2006, are affirmed as modified in accordance with this decision.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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J. WILLIAM BRAMMER, JR., Judge